

next argument in support of the proposition derived from the necessity of ascertain- ing the judgment, or final decree, the col- lection of fees is sometimes wholly, sometimes partly, in the hands of the lawyers, and officers fees. If fees and taxes can be laid by the legislature or the courts (admitting it for the sake of argument) without justifying the settlement of fees by process, then it is to be judge of the necessity of the law, then is its power unlimited. Who can say, that the necessity is urgent, and in- dispensable, that the necessity only, can excuse the violation of constitutional law, "The subjects shall not be taxed without the consent of their representatives in parliament assembled," is the sole foundation of the danger of settling fees by prerogative; when the establishment of them by law, "it be- comes necessary to advise the exercise of that power, and to declare that the necessity is indeed invincible, and that it has not been occasioned by any fault of the subjects; if it is not the one, the act is in- valid; and if the other, that very necessity which excuses the act, will be the accusation against who occasioned it, and in place of

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(L) If a governor may lawfully issue his proclamation for the establishment of fees, and it should receive legal binding force from the decree of the chancellor, who is this province its governor, or from the determination judges appointed by him, and removable at his pleasure? Then may he behave with all the violence of a oppressor. The will to ordain, and the power to enforce, will be lodged in the same person; I do not affect that the governor will act tyrannically; "but the true liberty of the subject (as Blackstone justly observes) can only exist in the gratuitous behaviour, as in the mild power of the magistrate."

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